

**DEEPHAVEN CITY COUNCIL MEETING
MONDAY, MAY 2, 2016
MINUTES**

1. **CALL MEETING TO ORDER:** Mayor Paul Skrede called the meeting to order at 7:00 p.m.

PRESENT: Mayor Paul Skrede, Councilmembers Keith Kask, Darel Gustafson, Steve Erickson and Tony Jewett

STAFF: Police Chief Cory Johnson, Zoning Coordinator Dale Cooney, and City Administrator Dana Young

2. **PLEDGE OF ALLEGIANCE**

The Council recited the Pledge of Allegiance.

3. **APPROVE CONSENT AGENDA**

Motion by Councilmember Kask to approve the Consent Agenda, consisting of the following items:

- A. Approve April 18, 2016 City Council Minutes
- B. Approve Verifieds
- C. Approve \$1,200.00 Fireworks Donation to South Lake Excelsior Chamber of Commerce
- D. Adopt Resolution No. 23-16, Approving Future Gift of Land & Cash
- E. Appoint Melissa McNeil to the Planning Commission

Seconded by Councilmember Erickson. Motion carried 5-0.

4. **MATTERS FROM THE FLOOR**

There were no Matters from the Floor this evening.

5. **PLANNING & ZONING REQUESTS**

A. Rick & Nancy Kotovic, 19915 Lakeview Avenue - Variance requests for lot size, front setback, exterior side yard setback, exceeding maximum impervious surface coverage, and minimum house width to construct a new house on a vacant R-3 lot

Zoning Coordinator Cooney presented his staff report. Cooney said that Rick and Nancy Kotovic, the property owners, have applied for a variance to construct a new house on the currently vacant R-3 parcel at 19915 Lakeview Avenue. Cooney said that because the property

is vacant, and to the best of staff's knowledge, it has never had a house on it, the city has not yet made the determination that this is a buildable lot under the current ordinance. Also, Cooney said, due to the substandard lot size and other factors, the Kotovic's are asking for several other variances including a variance to exceed the maximum allowable impervious surface coverage, to encroach into the required front yard setback, to encroach into the required side yard setback, and to have a house width below the minimum required by city code.

Cooney said that Section 1310.01(2) of the zoning ordinance states *“A structure may be built on any lot or tract of land of a size less than that required by this Section if such lot or tract of land is included in a plat or registered land survey filed for record after May 4, 1960 in accordance with all applicable laws, ordinances and regulations, and if there is compliance with all of the other dimensional requirements. If a new structure is to be built on any other lot or tract of land of a size less than that required by this Section, a variance must first be obtained in accordance with this Section.”*

He said that 19915 Lakeview Avenue is an R-3 lot and that Section 1302.05(2) requires R-3 lots to be at least 20,000 square feet in size. He said that the applicants are proposing to build on an 8,630 square foot lot and are asking for a lot size variance of 11,370 square feet. Cooney said that the property, located in the Cottagewood neighborhood, is typical of many of the undersized lots in this community.

Cooney noted that since the property has not had a house on it before, it will be required to connect to the public sewer system and the sewer connection fee is \$2,400.

Cooney said that the applicants are requesting variances from the front yard setback and the exterior side yard setback. He said that Section 1302.05(3) of the zoning ordinance requires a front yard setback of 35 feet. He said that the applicants are requesting a front yard setback of 20 feet and are seeking a variance of 15 feet. Cooney said that with a lot depth of 71.5 feet and with the required setbacks and house width totaling 75 feet (35 ft. front setback, 15 ft. rear setback, 25 ft. house width), a variance would be required to build on the property regardless of the proposal. Cooney said that due to the fact that the house to the south is 4 feet, 1 inch off of the lot line, the applicants are proposing to increase the rear yard setback. He noted that the property owners are also proposing a 32 foot wide house at its widest dimension.

Zoning Coordinator Cooney said that Section 1302.05(3) of the zoning ordinance requires an exterior side yard setback of 25 feet. He said that the applicants are requesting a side yard setback of 15 feet and are seeking a variance of 10 feet. Cooney noted that while the closest point of the house to the property line is 15 feet, the lot is angled in such a way that the front corner of the house is 28 feet from the property line.

Cooney said that Section 1302.05(2) of the zoning ordinance limits the maximum impervious coverage of the property to 25%. He said that the applicants are proposing an impervious surface area of 32.3% and are seeking a variance to exceed the maximum impervious surface area by 7.3%. Cooney said that lots of similar sizes have been granted variances for comparable hardcover, however those lots have typically used existing conditions as a benchmark for determining how much non-conforming excess hardcover might be reasonable. He said that, in

this case, the property currently has 0% hardcover, which makes determining the reasonableness of the proposal more difficult. He said that the applicant has proposed a rain garden in order to offset the excess hardcover.

Cooney said that Section 1310.03 of the zoning ordinance requires that a single family residential dwelling must be a minimum of 25 feet wide at its narrowest dimension and that the applicants are proposing a house that has a narrowest dimension of 21 feet for the area of the Great Room and Master Bedroom. He said that while the existing house plan could be modified to meet this requirement, doing so would expand the footprint of the home thereby increasing the hardcover.

Mayor Skrede said that he did not think that the house width variance was necessary. He said that the house, since it meets the width standard in all but the great room/master bedroom area, meets the spirit of the law. Skrede said that he would like to strike this portion of the request.

Councilmember Gustafson said that he has no issues with the house width, but that he did not want to ignore this particular part of the proposal.

Cooney said that, as currently shown on the plans, the house is 30 feet, 11 inches tall but that the height limit for an R-3 properties up to 10,000 square feet is 30 feet. He said the applicants have stated that they will reduce the roof height to become zoning code compliant.

Cooney said that he has concerns about the overall number of variances requested. However, Cooney said, taken separately, he does not feel that any one of the variances requested is unreasonable.

Cooney said that he recommends approval of the following with conditions of the variance requests of Rick and Nancy Kotovic for the property at 19915 Lakeview Avenue, as presented.

- For a lot size variance of 11,370 square feet
- To encroach 15 feet into the minimum required front yard setback
- To encroach 10 feet into the minimum required side yard setback
- To exceed the allowable maximum impervious surface area by 7.3%
- For a variance from the minimum required house width of 4 feet

He said that he recommends the following conditions:

- The height of the house is reduced to be zoning code compliant.
- The applicant pays the City of Deephaven sewer connection fee of \$2,400.
- The applicants complete the required stormwater management improvements to meet the requirements and specifications of the city engineer.
- The applicants enter into a maintenance agreement with the city to ensure the long-term operation and maintenance of the stormwater management improvements. The maintenance agreement shall be executed and recorded against the parcel.

Cooney stated his findings based on the review and approval process in Section 1315 of the ordinance:

Is the variance in harmony with the purpose and intent of the ordinance? The purpose and intent of the ordinance is to allow the orderly development and redevelopment of property within the city and when the ordinance standards cannot be met, it outlines the procedures to vary from these standards. The applicant is seeking to vary from the stated lot size, setback, and dimensional standards of the ordinance in order to construct a new house on a currently vacant undersized lot. The lot size and shape create a number of challenges for the property, but the overall design remains in harmony with the purpose and intent of the ordinance.

Is the variance consistent with the comprehensive plan? The request is consistent with the Comprehensive Plan's Housing Elements Goals and Policies which encourages safe, healthy and quality housing that respects the natural environment of the community.

Does the proposal put property to use in a reasonable manner? The proposal puts the property to use in a reasonable manner. The use of the property would be consistent with other similar sized properties in the community that have single family homes on undersized lots. The scale of the proposal and the requested variances are reasonable in that they are typical of the character of the community and would not unduly impact any of the neighboring properties.

Are there unique circumstances to the property not created by the landowner? The property is an undersized lot, but of a size that is consistent with other single-family properties in the neighborhood. The undersized property creates difficulties in meeting both the dimensional standards of the ordinance, and also meeting the hardcover restrictions of the ordinance. The proximity to the lot line of the neighboring house to the south, as well as the shape of the subject property creates other difficulties in meeting the setback requirements of the ordinance.

Will the variance, if granted, alter the essential character of the locality?

The proposal would not alter the essential character of the locality. The property is of a similar size to other single-family properties in the neighborhood. The new house is of a scale and character that will integrate well within the community.

Cooney said that the Planning Commission held a public hearing on the application at their April 19th meeting and recommended unanimous approval with conditions of the variance requests of Rick and Nancy Kotovic for the property at 19915 Lakeview Avenue.

Cooney concluded his staff report.

Skrede said that he was generally in favor of the proposal. He asked Gustafson if the Planning Commission meeting minutes accurately reflected the position of the Planning Commission regarding this application.

Gustafson said that the Planning Commissions comments were favorable.

Councilmember Erickson asked if the proposed rain garden was a lawn feature or would it be connected to the downspouts somehow. Cooney said that it was a lawn feature.

Motion to approve by Councilmember Kask based on the recommendation, findings, and conditions of the Planning Commission. Motion seconded by Councilmember Erickson. Motion carried 5-0.

B. Hendrickson Enterprises, Inc., 19300 State Hwy 7 - Conditional use permit request to replace and add several signs on their property

Zoning Coordinator Cooney summarized the staff report. He said that Hendrickson Enterprises, Inc. has submitted an application for a Conditional Use Permit to replace and add several signs on their property at 19300 State Highway 7. Cooney said that the previous tenant, Minnetonka Glass, has moved out and the existing space will be repurposed as Midas Office Space. Cooney noted that Hendrickson Enterprises owns and operates the existing Midas auto shop on the adjacent parcel at 19340 State Highway 7. Cooney said that the property is located in the C-1 zoning district and the proposed office space is a permitted use within the zoning district.

Cooney said that the applicant was granted a CUP for the new Spee Dee signage at the July 6, 2015 City Council meeting, and that, in the opinion of staff, the Spee Dee business and signage has improved the overall look of the property.

Cooney said that the applicant is proposing to add two illuminated Midas signs totaling 39 square feet. He said the signs will replace two illuminated Minnetonka Glass signs totaling 59.44 square feet for a reduction of 20.44 square feet of signage.

Cooney said that Section 1115.04 of the Deephaven Sign Ordinance states that no sign shall be erected, altered, reconstructed, maintained or moved in the city without first securing a Conditional Use Permit from the city in accordance with Section 1320 of the City's Ordinances. He said that the content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.

Cooney said that Section 1115.09(a) Deephaven Sign Ordinance states that the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs. Cooney noted that, at the granting of the most recent CUP for the property, the City Council determined that, due to their visibility, three facades on the building could be considered the front façade and that the 15% limitation would apply to all three facades.

Cooney said that, as proposed, Façade B and Façade C would meet the required 15% limitation. He said Façade D—which contains three suspended vinyl banner signs which were not approved as part of the most recent CUP—is not in compliance with the 15% limitation since it is currently at 17.31%. Cooney stated that, taken as a whole, all three facades combined are under the 15% limitation with a total signage of 12.64%.

Cooney said that he would like to include these vinyl banner signs in this CUP to bring them into compliance. He said that the city should determine if they will require that the signs be reduced in size to become compliant with the 15% rule for façade D, or if the city will accept the signs as they are since, if the three front facades are combined, the total signage is less than 15%.

Cooney stated that Section 1305.03 regulates business hours. Section 1305.03(1) limits the hours a business can sell goods and services to consumers to only between the hours of 6 AM and 9:30 PM. He said that Section 1305.03(3) states that interior and exterior lighted signs permitted to businesses may operate during business hours only.

Cooney said that he has concerns about additional signage on the property that is outside of the scope of the existing CUP. He said that two 14 square-foot flag signs are in the public right of way. He said that there are also wrapped stacks of tires that are used as promotional signage that add an additional 11.25 square feet of signage.

Cooney said that Section 1115.09(a) Deephaven Sign Ordinance states that the size of a sign may not exceed 15 percent of the wall area of the front façade of the structure in which it is located and in no case exceed 100 square feet for all other types of signs. He noted that the existing approved site signage from the most recent CUP totals 126.28 square feet of signage and that this amount was approved since it was considered legal non-conforming, and reduced the signage from existing conditions. However, Cooney said that the additional promotional signage further exceeds the 100 square foot limitation by an additional 39.25 square feet.

Cooney says that he recommends conditional approval of the Conditional Use Permit of Hendrickson Enterprises, Inc. to replace and add commercial signage at 19300 State Highway 7.

He said that upon review of the application, staff concluded that (a) the proposal will have no impact on the overall development of the community; (b) there will be no impact on the character and development of the neighborhood; (c) there will be no impact on the health, safety and welfare of the occupants of surrounding lands; (d) there will be no impact on traffic or parking conditions due to this signage; and (e) there will be no negative impact on property values on the subject property or those in the surrounding area.

He said that his recommendation is conditioned that: a) the hours of illumination be as outlined in Section 1305.03 of the ordinance; b) the promotional flag signage and tire signage be removed; and c) the vinyl banner signs on the east façade are included as a part of this conditional use permit.

Cooney said that the Planning Commission held a public hearing on the application at their April 19th meeting and unanimously recommended conditional approval of the conditional use permit request of Hendrickson Enterprises, Inc. to replace and add commercial signage at 19300 State Highway 7 based on the findings and conditions of staff.

Cooney concluded his staff report.

Councilmember Gustafson said that two Planning Commissioners had noted that the previous Conditional Use Permit had not been followed. He said that the city considers the CUP a contract, and that there is an expectation of compliance. He said the city should be careful with a property owner that knowingly drifted out of compliance.

Mayor Skrede said that he had toured the site earlier in the day with Zoning Coordinator Cooney. He said that the painted signage is being removed, and that the Planning Commission had requested and that the applicant had agreed to remove the painted window signage.

Sanford Hendrickson, the applicant, said that his objective was to clean up the corner as a whole. He said that the previous tenant, Minnetonka Glass, was not a good fit because of their accessory structures and debris. He said that he is in the process of removing the painted signage. He said the proposal would be a net reduction overall and that he would like a cleaner overall look for the property. He said that the flower planter for the LED sign would be completed this spring.

Skrede asked about the flag signs, and said that he did not think they enhanced the property. He asked if this was a franchise initiative.

Hendrickson said that the flags were given by the corporate ownership during the training and he should have had more oversight regarding those. He said that he thinks the overall look on the corner will be nice. He said that by having Minnetonka Glass leave, it offers another opportunity to clean up the corner.

Skrede said that the city should go out and look at the property once it is all done to make sure it is compliant. He said that he wants the corner to be successful and that he believes the owner is moving in the right direction.

Hendrickson said that he owns multiple Midas stores, but that his goal is to have this one to be the best one and the location where he would take corporate visitors.

Councilmember Jewett asked about the 15% limitation and asked if it is all considered one façade, he wouldn't want the signs grouped on a single façade. Cooney said that the city can make that restriction if they want, but that the CUP, as approved, would restrict changing the signs without city approval.

Councilmember Kask said that he thinks the vinyl signs look professional and thinks they are a better alternative than some other options.

Councilmember Erickson said that the city has the power under the CUP make sure that the vinyl signage is maintained in good condition and that the property is compliant.

Skrede said that he thinks the property is headed in the right direction visually.

Motion by Councilmember Kask to approve the Conditional Use Permit based on the recommendation, findings, and conditions of the Planning Commission.

Skrede made a friendly amendment to the motion that the painted window and painted bay door signage on the adjacent Midas Building at 19340 State Highway 7 be removed. This would exclude the Midas phone number that is currently painted on the window.

Motion was seconded by Councilmember Erickson. Motion carried 5-0.

C. Adopt Ordinance 13-74, Amending Section 1310.03 regarding Building Coverage

Zoning Coordinator Cooney said that the proposed amendment's first reading was at the April meeting and that he was not able to attend that meeting. He said that his objective with this ordinance was to determine which of those elements defined as structures should also be considered as building coverage. He said the definition of structure is very broad, but that he believed the definition of what constituted building coverage is likely narrower. He said he wanted to determine which structures should be covered by the building coverage ordinance.

Skrede said that perhaps the city should revisit the definition of a structure. He said that he does not want to get into the argument about what is and isn't a structure. He said that there are some things on a property that might create mass that should be considered structures.

Cooney said that there is value in having a broad definition of structure in the ordinance to keep items out of the setbacks. He said that, in this case, he is seeking a narrower definition to only count those things that should be considered "building coverage". He said things like pergolas and decks are a grey area.

Jewett asked if decks are counted. Kask said that it is best to count decks as structures. Kask said that they have hardcover impacts.

Skrede asked if someone has a patio, it is not covered by this ordinance, but it is counted as hardcover. He asked if that patio was converted into a deck 18 inches above the patio, should the city have an issue with that.

Erickson said that someone could build a deck higher than that. He said that a patio is fine, but a deck should be counted as building coverage. He said that we now have an ordinance to cover those non-shoreland areas of the city for hardcover issues.

Gustafson said that decks have a line of sight, but that patios do not. He said that things that impact the line of site should be limited by the ordinance.

Erickson said that he favors the broader definition in the ordinance since the city cannot cover every possible iteration of what constitutes building coverage. Erickson said that the limitations in the ordinance are generous and if someone is going over those limitations for any structure, they should come before the city.

Motion by Councilmember Jewett to maintain the city ordinance as written. Seconded by Councilmember Gustafson. Motion carried 5-0.

6. UNFINISHED BUSINESS

A. Other

There was no other Unfinished Business this evening.

7. **NEW BUSINESS**

A. **Approve One-Year City Assessor Agreement**

Administrator Young stated that Dan Distel has served as Deephaven's City Assessor since 1989. Since that time, the Deephaven City Council has typically entered into a series of two-year contracts with Dan, with annual contract fee increases tied to whatever percentage increase had been approved for employee salaries. Since union contracts for 2017 have not been settled, he recommends the approval of a one-year agreement with City Assessor Dan Distel with the same 2% increase that have been approved for City employees in 2016. This would increase his contract fee from \$50,284 to \$51,290. The current contract for assessing services is set to expire on May 31, 2016.

Administrator Young noted that Dan Distel discontinued assessing commercial properties in Deephaven beginning in 2013 when Hennepin County took over the commercial assessing services. The City currently pays Hennepin County \$2,000 per year for the assessment of commercial properties in Deephaven.

Councilmember Kask asked if the Hennepin County Assessor's Office would take over the assessing services when Dan decides to retire.

Administrator Young stated that the Council would have the option to consider either Hennepin County or a private assessor service.

Motion by Councilmember Kask to approve a one-year contract extension with Dan Distel for the assessment of residential properties at a contracted amount of \$51,290 from June 1, 2016 to May 31, 2017. Seconded by Councilmember Erickson. Motion carried 5-0.

B. **Approve 2017-2019 Fiscal Agent Agreement with Excelsior Fire District**

Administrator Young stated that the current three-year Fiscal Agent Agreement between the City of Deephaven and the Excelsior Fire District is set to expire on December 31, 2016. The Excelsior Fire District Board requested proposals for 2017-2019 Fiscal Agent Services from their member cities and the City of Deephaven was the only member city to submit a proposal.

He stated that the Fiscal Agent proposal from the City of Deephaven provides a three-year contract for services in the amount of \$18,000 for 2017, \$18,540 for 2018, and \$19,096 for 2019. The contract fee increased by \$1,025 in 2017 and 3% in 2018 & 2019.

He stated that the Excelsior Fire District Board will be acting on the Fiscal Agent Agreement with the City of Deephaven at their next meeting on May 25, 2016.

Motion by Councilmember Erickson to approve the 2017-2019 Fiscal Agent Agreement with the Excelsior Fire District. Seconded by Councilmember Kask. Motion carried 5-0.

C. Adopt Ordinance No. 05-46, Amending Public Nuisances

Mayor Skrede stated that the conditions present at 18880 Minnetonka Blvd violate the spirit of our public nuisance ordinance. He stated that the purpose of this ordinance would be to get a handle on large containers stored on residential property. He stated that he discussed this matter with Councilmember Kask and both don't want storage containers to become some sort of housing with a roof over the top. He stated that what he has witnessed has been an abuse due to the lack of an ordinance to control these activities.

Councilmember Erickson asked if staff has had a conversation with the homeowner.

Zoning Coordinator Cooney stated that he has met with the homeowner who has a lot of stories on what he intends to do. He stated that the homeowner has informed him that he intends to tear down the house, although not by the July deadline, and construct a new garage.

Councilmember Erickson asked what the containers are being used for.

Zoning Coordinator Cooney stated that the homeowner is moving stuff from the house to the storage containers.

Councilmember Erickson stated that he understands what we are trying to do but 60 days is not enough time. He stated that it is not uncommon to have items in storage for 10-12 months.

Mayor Skrede asked why these items wouldn't be in mini storage rather than stored on a residential property.

Councilmember Erickson stated that when he rebuilt his house, he put everything in his garage. He asked if we would want to attach an escape clause by tying in storage containers with the issuance of a building permit. He stated that in a number of instances you might want to have the storage containers there a year. He noted that his large garbage container was there for four months while he did some interior remodeling.

Councilmember Kask stated that proactive homeowners put containers in prior to load limits and take them out after load limits have been lifted. He added that roll-offs should not be on a residential property month after month.

Councilmember Erickson suggested that residents could pull a 120 or 180 day permit.

Councilmember Kask stated that he supports a 60-day time period. He stated that people are making a living storing containers and pods on site rather than using commercial storage facilities. He stated that it is a commercial use on a residential property and residents should get their job done in 60 days.

Councilmember Gustafson noted that you get charged for storage containers after a period of time and also felt that 60 days was plenty of time.

Mayor Skrede stated that when someone calls to complain about an issue on a neighboring property, he should be aware of what is happening on that property. He stated that in this case, communication is missing. He stated that this ordinance would help with accountability. He stated that it could be renewed with a submitted plan. He added that he would also like this ordinance to prohibit the creation or maintenance of large storage areas on a residential property.

Councilmember Kask stated that there has been significant growth of mechanical freight and they are springing up all over. He stated that they are commercial type storage that are not compatible with residential storage.

Mayor Skrede asked if the homeowner of 18880 Minnetonka Blvd had obtained a building permit.

Zoning Coordinator stated that the applicant pulled a demo permit and staff later found out that he was doing some interior foundation work. He stated that Minnetonka inspected the foundation work for health and safety concerns. He stated that the homeowner now claims that he is planning to completely demo the house. He stated that the homeowner has until May 15th to comply with the permit requirements.

Councilmember Kask stated that the purpose of this ordinance is to ensure that residential areas are protected. He stated that this will prevent someone from storing construction material, roll-offs and containers that are well outside the most liberal use of residential property.

Motion by Councilmember Gustafson to adopt Ordinance No. 05-46, Amending Public Nuisances by establishing time limits on the placement of storage containers, garbage containers and storage pods as amended and waive the second reading. Seconded by Councilmember Kask. Motion carried 5-0.

D. Other

There was no other New Business this evening.

8. DEPARTMENT REPORTS

A. Excelsior Fire District

Fire Board Liaison Steve Erickson provided a brief review of the April 19th EFD Budget Work Session. He stated that upcoming meetings include a service delivery Work Session on May 17th and the regular Board meeting on June 8th.

Discussion was held regarding the request from the Fire District to post a 125th Anniversary sign on the fire station and on a sandwich board. It was recommended that the Fire District submit an application to the City Council for permission to post the sign.

B. Police Department

Police Chief Johnson reviewed the April 2016 Incident Report. He stated that he is very pleased with the progress of the new officer, noted that the CSO Officer will be starting on May 4th and that minor maintenance has been performed on the speed trailer.

C. Public Works

Administrator Young provided an update on recent and upcoming public work activities.

D. Administration

Administrator Young provided a brief summary on the following items:

- Summer Hours
- Part-Time Summer Help
- Arbor Day
- State Audit Report
- Street Sweeping
- 2016 Contract Renewals

9. ADJOURNMENT

Motion to adjourn by Councilmember Kask, seconded by Councilmember Erickson. Motion carried 5-0. The meeting adjourned at 9:00 p.m.

Respectfully submitted,
Dana H. Young
City Administrator